

TEXT OF REGULATIONS
CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

**Division 13. California Alternative Energy and Advanced Transportation Financing
Authority**

Article 2. MANUFACTURING SALES AND USE TAX EXCLUSION PROGRAM

§ 10032. Application Requirements.

(a) Timing of Application submissions.

(1) Except as otherwise provided by the Authority pursuant to subparagraph (3) below, Applications may be submitted for consideration at any time. Applications will be presented at the first meeting at which Applications will be considered occurring at least 60 calendar days after the receipt of the Complete Application, except as noted in paragraphs (3), (8), and (9) below.

(2) Applications must be submitted via e-mail to CAEATFA@treasurer.ca.gov as well as in person or via regular mail or commercial delivery service. CAEATFA must receive the original paper Application within five (5) business days of submission of the electronic version of the Application.

(3) The Authority may limit the number of meetings each year at which Applications will be considered.

(4) Except as provided in subparagraph (A) below, Applications shall be capped at \$20 million of sales and use tax exclusions (STEs) per Applicant, per calendar year, based on the average statewide sales tax rate at time of Application. For any Applicant which has a parent company with an ownership interest greater than 50%, the \$20 million cap also applies to the Applicant's parent company and the parent company's subsidiaries or affiliates.

(A) If STE will be available at the last Authority board meeting of the calendar year, the Authority may provide additional STE to Applicants that qualified for additional STE but were capped at \$20 million of STE. Applicants wishing to exceed the \$20 million cap shall bring a revised Project Application or a new Application before the Authority for consideration in December of the same calendar year in which the original Application was approved. The revised or new Application shall include updated information requested in Section 10032 and will be evaluated pursuant to Section 10033. The Authority will announce end of the year availability no later than 28 days prior to the December Authority meeting.

i. The amount of additional STE available to each Applicant shall be determined by the Executive Director, and shall be the amount of the Applicant's approved award, plus an amount calculated by taking the unawarded STE for that calendar year and dividing it evenly between all Applicants that wish to exceed the \$20 million Project cap, but not to exceed the requested STE for any Applicant. Applicants seeking additional STE beyond the Project cap shall not be eligible to receive STE from the subsequent calendar year pursuant to the provisions of Section 10032(a)(7)(A).

(5) To the extent that total sales and use tax exclusions awarded during the calendar year reach \$100 million (the statutory cap), no additional Applications will be reviewed during that calendar year. Applications that are received but not awarded due to the statutory cap will be placed on a waiting list. To the extent that additional STEs become available during the calendar year, Applications on the waiting list will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked, based on Competitive Criteria. Applications that are on the waiting list but are not evaluated by staff due to the statutory cap will be considered in the subsequent calendar year.

(6) Complete Applications will be reviewed in the order in which they are received, except as noted in paragraph (7) below.

(A) The order in which they are received will be determined by the time and date stamp of the electronic submission of the Application via e-mail.

(7) In the event that Applications received by CAEATFA represent STEs in excess of the statutory cap for that calendar year, the order in which the Applications shall be considered by the Authority will be based on a ranking of Competitive Criteria of all Projects moving forward before the board within the same month, as established in subparagraphs (A) and (B) below.

(A) Each criterion that the Application meets shall be worth between one and five points. The Projects with the greatest point score will be reviewed and presented to the CAEATFA Board. In the event of a tie, the Application representing the smaller STE award will move forward to consideration before the Authority. If the STE amounts are identical, the Application that was received by CAEATFA first shall be heard first. When the amount requested in the Application exceeds the STE available in the calendar year, the Authority shall award the remaining STE request using STE from the following calendar year. Any remaining Applications shall be placed on the waiting list.

(B) Competitive Criteria.

(i) If the Project is located in a county with an unemployment rate greater than 110% of the statewide average, the Project shall receive points based on the ratio of the local unemployment rate (Local Rate) to the Highest Unemployment Rate In the State (HUIS), pursuant to the following equation:

$$1 + ((\text{Local Rate} / \text{HUIS}) * 4)$$

- a. If a Project receives points for the unemployment rate of the proposed Project location and, after approval by the Authority, the Applicant changes its intended location to a county with a lower unemployment rate, such that the ranking of the Applicants would have been affected, the award shall be rescinded and automatically awarded to the next awardee in line.
 - b. If an award is rescinded due to changes in the proposed Project location, the Applicant may submit a revised Application with an updated Project location.
 - c. The local unemployment rate means the rate within the county in which the Facility is located as reported by the California Employment Development Department. The highest unemployment rate in the state is unemployment rate for the county with the highest countywide rate reported. The most current annual average unemployment rate information available at the time of the Application submission shall be used.
- (ii) If the Applicant has its Corporate Headquarters located in California, the Project shall receive one point, provided that:
- a. if the Applicant has a parent company with an ownership interest greater than 50%, the parent company must also have its Corporate Headquarters in California.
- (iii) If the Applicant is classified as small businesses under U.S. Small Business Administration guidelines (Title 13 of the Code of Federal Regulations) and has fewer than 500 employees, the Project shall receive one point, provided that:
- a. if the Applicant has a parent company with an ownership interest greater than 50%, the parent company must also be classified as small business under U.S. Small Business Administration guidelines (Title 13 of the Code of Federal Regulations) and have fewer than 500 employees.
- (iv) If the Applicant has not previously been approved for an award by the Authority, the Project shall receive five points, provided that:
- a. If the Applicant has a parent company with an ownership interest greater than 50%, neither the parent company, nor its subsidiaries or affiliates may have been previously approved for an award by the Authority.
- (v) If the Applicant can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application, the Project shall receive five points.

(8) Upon a recommendation of the Executive Director, the Authority may consider an Application at a meeting occurring less than 60 calendar days after the receipt of the complete Application.

(9) The Authority may, upon a finding that it is in the public interest and advances the purposes of the Program, at any time announce that it is not accepting further Applications.

(b) Application. Applicants shall submit to the Authority the information required by this section.

(1) Applications not meeting all requirements shall be considered incomplete. An Applicant shall be notified by the Authority should its Application be deemed incomplete and may correct any deficiency and resubmit the Application. Resubmitted Applications will be reviewed for completeness and, if complete, will be further reviewed by staff and presented to the Authority pursuant to the regular review and evaluation process and timeline.

(2) Determination of completeness, compliance with all requirements, and the scoring of the Application shall be based entirely on the documents contained in the Application as of the date on which the Application was submitted. Any additional documents pertaining to the requirements or scoring categories that the Applicant chooses to submit shall be accepted after the Application-filing date only with the understanding that, for purposes of calculating the 60 calendar days to determine the earliest meeting at which the Application will be heard and the date on which a complete application is deemed to have been received, the date the additional documentation is received shall be the date of receipt of the Application. In the event the Authority asks an Applicant for additional information or requests clarification or correction of errors, Applicants shall be given up to three (3) business days from the date of receipt of staff notification to submit said documents to complete the Application. A timely response shall not cause a redetermination of the date of receipt. The Authority may request additional clarifying information from third party sources, such as local government entities, other state agencies, or subject matter experts. To the extent that third party information is received that contradicts or otherwise calls into question information provided in the Application or otherwise may result in a reduction in the score that an Application would receive, the Applicant will be notified and will be given three (3) business days to respond to the third party information received.

(3) An Application may not be changed, nor may any additional information with respect to scoring be submitted subsequent to the Application filing date, except as noted above.

(4) Applications not submitted with the Application Fee will be considered incomplete, unless an Application is a resubmission pursuant to Section 10032(a)(5).

(5) To be considered complete, a paper copy of the filled-out Application and any supporting documentation, including original signatures as required on part A of the Application form, must be received at the Authority's Sacramento office.

(c) Documentation. The following documentation relevant to the proposed Facility is required to be submitted with all Applications:

(1) Applicant Certification. A signed statement certifying the responsibility of the Applicant to:

(A) provide Application-related documentation to the Authority upon request;

(B) be familiar with and comply with Program statutes and regulations;

(C) hold the Authority and its employees and consultants harmless from any and all issues arising from the Applicant's participation in the Program;

(D) agree to comply with and remain in compliance with all applicable laws and regulations during the term of the Regulatory Agreement;

(E) acknowledge that the Authority has recommended the Applicant seek tax advice;

(F) acknowledge that the Application will be evaluated according to Authority regulations;

(G) acknowledge that continued compliance with Program requirements, including ongoing reporting requirements and any costs associated with such requirements for the term of the Regulatory Agreement, is the responsibility of the Applicant;

(H) acknowledge that information submitted to the Authority may be subject to disclosure pursuant to the Public Records Act (Government Code Section 6250, et seq.);

(I) agree to enter with the Authority into a Regulatory Agreement if the Application is approved; and,

(J) acknowledge, under penalty of perjury, that all information provided to the Authority is true and correct, and that the Applicant has an affirmative duty to notify the Authority of any material changes to the information submitted in the Application during the Application process and the term of the Regulatory Agreement.

(2) Legal Information. Applicants shall complete the Legal Status Questionnaire (as revised on October 1, 2010).

(3) Designated Contacts. The Application must identify designated contacts who can respond to questions from the Authority or provide additional information if requested. If the designated contacts are not directly employed by Applicant, the Application must include appropriate documentation signifying the contact's authority to represent and act on behalf of the Applicant with respect to the Application.

(4) Applicant and Facility Information. Applicants are responsible for providing all requested information, which shall include:

(A) Applicant Information.

- (i) Name, phone number, email address, mailing address, and taxpayer identification number of Applicant,
- (ii) Applicant organization type (e.g., corporation, LLC, partnership, etc.),
- (iii) Name, phone number, email address, and mailing address of a primary and secondary contact person
- (iv) Contacts' titles or relationships to Applicant,
- (v) The name(s) of the owners of the Applicant's business entity.
 - a. If the Applicant is a corporation, include the names of the officers of the corporation, major shareholders (10.0% or greater), and date and place of incorporation.
 - b. If the Applicant is a sole proprietorship, include the name of the proprietor and the date and place of establishment.
 - c. If the Applicant is another type of legal entity, identify the name(s) of the owners and each owner's share of ownership (the totals of the reported shares of ownership should equal 100%).
 - d. For all types of business entities, other than publicly traded corporations, private equity firms or sole proprietorships, that are owned by another business entity with an ownership share greater than or equal to 10 percent, identify any individuals or businesses with an ownership share in the parent entity of 10 percent or more.
- (vi) Brief description of the Applicant's business, including product(s) produced, facility locations, years in business, and any unique technological or environmental characteristics of the business or products.

(B) Facility Information.

- (i) Brief description of Facility and product(s) to be produced, including the following:
 - a. Physical location of the Facility.
 - b. A description of the Facility, including the design, manufacturing, or assembly process to be employed, the product to be produced, and the intended or likely customers.
 - c. Identification of the Advanced Transportation Technology or Alternative Source product, component or system to be produced, the Advanced Manufacturing

process to be utilized, or the type of Recycled Resource Extraction Project. In the case of a Facility producing property or products that, after further manufacture, will become the Green Component of an Advanced Transportation Technology or Alternative Source product or system, the Applicant must describe both the property or product produced by the Facility and the Green Component of the Advanced Transportation Technology or Alternative Source product or system for which the product produced will be used.

d. Current Facility status and a schedule indicating the estimated Facility construction start date through the placed-in-service date for the Qualified Property identified in the Application, including the expected date of any needed permits.

e. Description of the sources of financing necessary for Facility completion, including the provision of financial assistance from any local governments for the project.

f. Total value of the capital stock used to produce the product, including the anticipated Qualified Property purchases. The value is not the cost of the capital stock, but the depreciated value of the capital stock excluding buildings and land.

g. Projected average number of employees at the Facility, measured in full time equivalents, assuming Qualified Property is utilized.

h. Projected number of employees employed for purposes of constructing the Facility or installing Qualified Property, measured in full time equivalents.

i. For Alternative Source Projects producing Biofuels, the fraction of Biofuel produced that is used to offset external fuel purchases.

j. Taxability of end of supply chain product for purposes of generating sales taxes.

(C) Qualified Property Information. Completed provisional Qualified Property list to include the following information for each piece of property to be subject to the sales and use tax exclusion. Good faith estimates are acceptable if specific property characteristics are not available at the time of Application. Individual items of Qualified Property can be grouped together provided that the individual items are reasonably related, such as items that will be used together to produce a particular sub-component or perform a discrete function in the manufacturing process.

(i) Brief description of Qualified Property to be purchased and its use in the manufacturing, production, assembly, or design process.

(ii) Estimated cost of the Qualified Property to be purchased.

(iii) Average Estimated Useful Lifespan of the Qualified Property, weighted by cost.

(iv) Estimated percent of time Qualified Property will be (a) used to make Advanced Transportation Technologies or Alternative Source products, components, or systems, (b) utilized in an Advanced Manufacturing process, or (c) utilized in a Recycled Resource Extraction Project.

(D) Product information (all information must relate solely to the Facility or product to be produced with Qualified Property if the Applicant produces other goods or services):

(i) Brief description and name of the product to be produced with Qualified Property and within California.

(ii) Estimated average annual number of Qualified Products produced or amount of recycled material to be produced.

(iii) Estimated per unit sales price.

(iv) Estimated per unit production-related purchases from suppliers, assuming Qualified Property is utilized or installed.

(v) Estimated percent of production costs from California Suppliers.

(vi) Estimated per unit labor costs, assuming Qualified Property is utilized or installed.

(vii) For Alternative Source and Advanced Transportation Projects, the Estimated Useful Lifespan of product, component, or system.

(viii) Estimated percent of total Qualified Products to be sold in California.

(ix) For Alternative Source or Advanced Transportation Projects, statement as to whether the technology, product, component, or system is a subcomponent of a Qualified Product or an end-of-supply-chain product.

(x) For Alternative Source or Advanced Transportation Projects, total value of the end-of-supply-chain Green Component.

(xi) Estimated percent of total end of supply chain product sales in California.

(E) Environmental Benefit Information.

(i) For Facilities producing the Green Component of Alternative Source products, components or systems:

a. Annual energy generation capacity or energy content per unit.

b. Lbs. of CO₂ (or equivalent) emitted per MWh or equivalent.

c. Lbs. of SO₂ emitted per MWh or equivalent.

- d. Lbs. of NOx emitted per MWh or equivalent.
 - e. Amount of other pollutants emitted per MWh or equivalent.
 - f. Pollution cost of other pollutants emitted per MWh or equivalent.
- (ii) For Facilities producing the Green Component of Alternative Source energy efficiency products, components or systems:
- a. Type and units of energy conserved.
 - b. Applicable Recognized Energy Efficiency Standard.
 - c. Annual baseline system consumption of energy per unit.
 - d. Annual improved system consumption of energy per unit.
- (iii) For Facilities producing the Green Component of Advanced Transportation Technology products, components, or systems:
- a. Annual baseline system consumption of energy per unit.
 - b. Annual improved system consumption of energy per unit.
 - c. Annual consumption of any offsetting energy required to achieve improved system performance.
- (iv) For Facilities producing the Green Component of Alternative Source or Advanced Transportation Technology products, components, or systems that do not fall within the above categories of products, the Applicant shall explain and quantify the following:
- a. Description of environmental benefits.
 - b. Annual value of environmental benefits associated with use of the product.
 - c. Annual pollution cost of any off-setting energy use or other pollutants emitted.
- (v) For Advanced Manufacturing Facilities:
- a. Description of environmental benefits.
 - b. Estimated reduction in energy or water use; solid waste, hazardous waste, or air pollution emissions.
 - c. Description of any environmental sustainability plans.

(vi) For Recycled Resource Extraction Projects:

- a. Description of environmental benefits.
- b. Marginal increase in total amount of material recycled due to the sales and use tax exclusion.

(F) Optional Supplemental Information. The following information may be submitted with an Application. Submission of this information may increase an Applicant's score, as specified in Section 10033, however, the Authority will not use this information to adjust an Applicant's score if an Applicant's score, based on the required information listed above, exceeds the established points threshold.

(i) Applicants claiming any additional significant environmental benefits associated with use of their product beyond those associated with reduced energy consumption or increased Alternative Source energy generation may provide a description of these benefits, including the amount of pollution avoided and a quantification of the impact of the pollution reduction in dollars if possible.

(ii) For Advanced Manufacturing Applicants only, Other Facility Information:

- a. Applicants with facilities located in California that perform research and development functions related to the product or production process at the Facility that is the subject of the Application may submit information establishing the location of the research and development facility and the connection between the research and development and the Facility, submission of which may increase an Applicant's score.
- b. Applicants that have partnerships with educational institutions either for the purpose of training the workers at the Facility or for purposes of assisting in the training of potential future workers may submit information documenting this partnership, submission of which may increase an Applicant's score.
- c. Applicants in Industry Clusters, as defined, may submit information establishing this fact, submission of which may increase an Applicant's score.

(iv) Additional documentation only for Applicants claiming that without the exclusion the proposed Facility will not be sited in California. Determination of Facility benefits, as further delineated in Section 10033, may be increased for Facilities that would not locate production Facilities in California absent the grant of the sales and use tax exclusion. For Applicants claiming that Facility location or expansion decisions are dependent upon receipt of the sales and use tax exclusion, Applications must provide evidence to support the claim. Such evidence may include the following:

- a. Internal financial analysis demonstrating the extent of an advantage for a non-California site.

b. Location consultant report demonstrating the extent of an advantage for a non-California site.

c. Other internal or external analyses demonstrating that, absent the grant of the sales and use tax exclusion, the proposed Facility will not proceed at the California site.

(G) Calculations and assumptions relied upon by the Applicant. For any calculation performed by or assumption relied upon by the Applicant in completing the Application, the Applicant must provide an explanation of the basis for the value resulting from the calculation or reasonableness of the assumption relied upon. Applicants may be asked to provide additional supporting information, including business plans, pro forma financial statements or other comparable documents used for the purpose of soliciting investors to verify responses contained in the Application. Applications that do not adequately document any calculations or assumptions relied upon will be considered incomplete.

(5) Application materials and supporting documentation in excess of thirty pages will not be considered or reviewed except to the extent that documentation in excess of this page limit is provided in response to a direct request for additional information from the Authority.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.

§ 10036. Fees.

(a) Application Fee.

(1) Except as provided in paragraph (5) below, Everyevery Applicant shall be required to pay an Application Fee.

(2) The Application Fee shall be equal to .0005 (one twentieth of one percent) of the total amount of Qualified Property identified in the Application as originally submitted. If, during the Application process, the Applicant reduces the amount of Qualified Property listed in the Application as submitted, the Applicant will not be entitled to a refund of the excess Application Fees paid. If the Applicant makes a request to CAEATFA to increase the amount of Qualified Property listed in a revised or amended Application, CAEATFA will require additional Application Fees to be submitted. The minimum Application Fee shall be \$250 and shall not exceed \$10,000.

(3) This fee shall be paid in a check payable to the Authority, and shall be submitted with the Application.

(4) This fee is not refundable, except in the event an Application is not reviewed by staff due to oversubscription of the \$100 million annual program cap.

(5) If the Applicant can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application, the Executive Director may waive the Application Fee.

(b) Administrative Fee.

(1) The Authority shall charge an Administrative Fee to cover the costs associated with the Program, including the costs of compliance monitoring.

(2) The total Administrative Fee amount shall be .004 (four tenths of one percent) of the total amount of the Qualified Property purchased.

(3) In no case shall the total Administrative Fee be less than \$15,000 nor more than \$350,000.

(4) \$15,000 of the total Administrative Fee shall be due upon the execution of the Regulatory Agreement between the Applicant and the Authority.

(5) The balance of an Applicant's Administrative Fee shall be payable semi-annually on July 31 and January 31 each year following Application approval until such time as the total amount of the Administrative Fee due has been paid. The amount of the Administrative Fee due during each period shall be based on the Qualified Property purchase amounts during the immediately preceding six-month period (from January 1

through June 30 and July 1 through December 31, respectively) such that the fee due is proportional to the total amount of the Administrative Fee remaining after the initial \$15,000.

(A) Each semi-annual Fee payment shall include information about the Qualified Property purchased, including the acquisition date; vendor city, county, and country; cost; address where the Qualified Property will be located or installed; a description and explanation of the purpose of the Qualified Property; and any other information requested by the Executive Director that is reasonably related to the purposes of the Program.

(B) The Applicant will submit a "final statement" when the total amount of Qualified Property purchases equals the total amount of exclusion granted or when the Applicant no longer wishes to exercise the sales and use tax exclusion granted and signifies that the Applicant's purchases are no longer subject to the sales and use tax exclusion. Pursuant to Section 10036 a determination will be made of the total amount of Qualified Property purchased, and the corresponding amount of the total Administrative Fee due. If any remaining Administrative Fee is due, the Fee shall be submitted together with the final statement. In the event that an Applicant has overpaid Administrative Fees, the overpayment will be paid to the Applicant within thirty (30) days of submission of the final statement.

(6) The initial \$15,000 paid by the Applicant at the time of executing the Regulatory Agreement will be credited to the Applicant's total Administrative Fee upon a determination of total amount of Qualified Property actually purchased.

(7) The Administrative Fee shall be paid in checks payable to the Authority.

(8) The Administrative Fee is not refundable, except as indicated in section (5)(B) above.

(c) Other fees

(1) An Applicant that requests a modification to its Regulatory Agreement or authorizing resolution that must be approved by the Authority shall pay an additional administrative fee of \$500.

(2) An Applicant that requests a modification to its Regulatory Agreement or authorizing resolution that requires a revised application to be considered by the Authority shall pay .00005 (one two hundredth of one percent) of the total amount of Qualified Property identified in the Authority resolution approved by the board.

(A) In no case shall this fee be less than \$500 nor more than \$2,000.

(3) This fee shall be paid in checks payable to the Authority.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.